

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1996 SESSION

FILED
January 31, 1997
Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

NELSON JOSEPH LECLAIR,

Appellant.

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C.C.A. NO. 01C01-9603-CC-00104

RUTHERFORD COUNTY

HON. J. S. DANIEL,
JUDGE

(Sentencing)

FOR THE APPELLANT:

FOR THE APPELLEE:

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-and-
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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The defendant was indicted on September 5, 1995, for driving under the influence (DUI), second offense,¹ and driving on a revoked license. The defendant pled guilty to DUI in exchange for the State's agreement to dismiss the other charge. After a hearing, he was sentenced to eleven months, twenty-nine days in accordance with T.C.A. § 55-10-403(a)(1). Forty-five days of his sentence were to be served in the Rutherford County workhouse with the remainder to be served on supervised probation. The defendant was fined six hundred dollars (\$600) and had his driving privileges revoked for two years. Before entering his guilty plea, the defendant, a Davidson County resident, asked that he be able to serve his sentence in Davidson County rather than in Rutherford County. The transfer was requested because the defendant wanted to participate in Davidson County's work release program. The trial court denied this request. It is from this denial that the defendant now appeals. After a review of the record, we find no error in the defendant's sentence and affirm the judgment below.

In the early morning of June 20, 1995, the defendant was stopped by Rutherford County police officers along Interstate 24 in Smyrna in Rutherford County. The officers noticed a strong odor of an intoxicant upon the defendant's person and that he was unsteady on his feet. The defendant refused to take the Intoximeter breath test but did attempt the field sobriety tests. After failing a series of these tests, he was arrested.

When a defendant complains of his or her sentence, we must conduct a de novo review with a presumption of correctness. T.C.A. § 40-35-401(d). The burden of

¹The defendant's first DUI offense was also in Rutherford County.

showing that the sentence is improper is upon the appealing party. T.C.A.

§ 40-35-401(d) Sentencing Commission Comments. This presumption, however, "is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

In this case, the defendant complains that the trial court should have granted his request to serve his sentence in Davidson County because Rutherford County does not have a work release program. We have been unable to find any support for the defendant's argument that this request should have been granted. Nor do we find any authority giving a trial judge the right to order a misdemeanor sentence to be served in a county other than the one in which the offense occurred. The Supreme Court of Tennessee has previously held that probation is a privilege, not a right. State v. Correll, 626 S.W.2d 699 (Tenn. 1982). Work release is a form of probation and is, therefore, a privilege and not a right. State v. Lowe, 661 S.W.2d 701 (Tenn. Crim. App. 1983). We find no error in the trial court's determination that the defendant serve his sentence in Rutherford County.

Thus, we find the trial court properly denied the defendant's request to serve his sentence in Davidson County. The judgment is affirmed.

JOHN H. PEAY, Judge

CONCUR:

DAVID H. WELLES, Judge

JERRY L. SMITH, Judge